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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 1335.

THE PACIFIC EXPRESS COMPANY, PLAINTIFF IN ERROR,

vs.

JAMES K. McDOWELL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TEXAS.

FILED OCTOBER 3, 1890.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., NOVEMBER 4, 1890.

1 *Caption.*

Pleas in the circuit court of the United States for the eastern district of Texas, in the fifth circuit, held at the United States court-rooms, in the city of Jefferson, in the district aforesaid, before the Honorable Aleck Boarman, judge *ad interim* of the United States, district judge for said eastern district of Texas, February 13th, 1890, at a regular and stated term of said court, in the year of our Lord one thousand eight hundred and ninety.

In the U. S. Circuit Court, at Jefferson.

J. K. McDowell
vs.
Pacific Express Company. } No. 314.

Now, on this the 13th day of February, 1890, after the motion in arrest of judgment was overruled by the court, comes the defendant and prays the court to grant and allow a writ of error in this cause to move the same to the honorable Supreme Court of the United States for revision, under the act of Congress approved February 25th, 1889.

JNO. W. HOOPER,
BOOKHOUT and CULBERSON,
Attorneys for Defendant.

Endorsed: Filed February 13th, 1890. W. E. Singleton, clerk.

2 J. K. McDowell
vs.
Pacific Express Company. } No. 314.

February 13th, 1890.

On this day came on to be heard the defendant's application for a writ of error to remove this cause to the Supreme Court of the United States for revision, and, the court having considered the same, it is ordered and adjudged that said application for writ of error be, and the same is hereby, granted.

It is further ordered that the writ of error bond in this suit be, and the same is hereby, fixed at the sum of one thousand dollars, conditioned as provided by law, and upon this defendant entering into such bond within ten days from date, this judgment herein shall be, and the same is hereby, superseded.

ALECK BOARMAN, *Judge.*

Endorsed: Filed February 13th, 1890. W. E. Singleton, clerk.

3 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the circuit court of the United States for the eastern district of Texas, at Jefferson, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment of a plea which is in the said circuit court, before you or some of you, between James K. McDowell, plaintiff, and The Pacific Express Company, defendant, a manifest error hath happened, to the great damage of the said Pacific Express Company, as by its complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal United States Circuit Court, Eastern District of Texas, at Jefferson.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 13 day of February, in the year of our Lord one thousand eight hundred and ninety.

W. E. SINGLETON,
Clerk of the Circuit Court of the United States for the Eastern District of Texas, at Jefferson.

Allowed by—
ALECK BOARMAN, *Judge.*

3½ [Endorsed:] # 314. James K. McDowell *vs.* Pacific Express Company. Writ of error. Filed Feb'y 13, '90. W. E. Singleton, clerk.

4 Know all men by these presents that we, Pacific Express Company, a corporation, as principal, and —— —— ——, as sureties, are held and firmly bound unto James K. McDowell in the full and just sum of one thousand dollars, to be paid to the said James K. McDowell, his executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 13th day of February, in the year of our Lord one thousand eight hundred and ninety.

Whereas lately, at a circuit court of the United States for the eastern district of Texas, at Jefferson, held by the Honorable Aleck Boarman, by designation of the circuit judge of the fifth circuit, at

the February term, 1890, in a suit depending in said court between James K. McDowell, plaintiff, and The Pacific Express Company, defendant, a judgment was rendered against the said Pacific Express Company for the sum of six hundred dollars and all costs of suit, and the said Pacific Express Company having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation directed to the said James K. McDowell, citing and admonishing him to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next:

Now, the condition of the above obligation is such that if the said Pacific Express Company shall prosecute said writ of error to effect and answer all damages and costs if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

4½ Sealed and delivered in the presence of—

PACIFIC EXPRESS COMPANY, [SEAL.]
By C. A. CULBERSON,
Agent and Attorney.

T. J. RODGERS. [SEAL.]
H. H. SCHLUTER. [SEAL.]
W. T. ATKINS. [SEAL.]

Approved by—
ALECK BOARMAN, *Judge.*

Endorsed: Filed February 13th, 1890. W. E. Singleton, clerk.

5 The United States of America to James K. McDowell, late of Camp county, eastern district of Texas, or his attorneys of record, Messrs. George T. Todd and Edward Guthridge, both of Marion county, eastern district of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, holding sessions at Jefferson, Texas, wherein James K. McDowell is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal United States Circuit Court Eastern District of Texas, at Jefferson.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 24 day of February, in the year of our Lord one thousand eight hundred and ninety.

W. E. SINGLETON,
Clerk U. S. Circuit Court, E. D. Texas, at Jefferson.

On this 25th day of February, in the year of our Lord one thousand eight hundred and ninety, personally appeared Hal. Singleton

before me, the subscriber, W. E. Singleton, clerk of the United States circuit court in and for the eastern district of Texas, at Jefferson, and makes oath that he delivered a true copy of the within citation to George T. Todd, an attorney of record in the case of James K. McDowell *vs.* Pacific Express Co., No. 314.

{ Seal United States Circuit Court, Eastern District of Texas, at Jefferson. }

HAL. SINGLETON.

Sworn to and subscribed *the* this the 25th day of February, A. D. 1890, at the city of Jefferson, State of Texas, & of said district.

— —.

6 The United States of America to James K. McDowell, late of Camp county, Texas, or his attorneys of record, Geo. T. Todd and Edward Guthridge, both of Marion county, Texas, and of the Eastern district of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Texas, holding sessions at Jefferson, Texas, wherein The Pacific Express Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 12 day of May, in the year of our Lord one thousand eight hundred and ninety.

{ Seal United States Circuit Court, Eastern District of Texas, at Jefferson. }

W. E. SINGLETON,
Clerk U. S. Court E. D. T., at Jefferson.

On this — day of May, in the year of our Lord one thousand eight hundred and ninety, personally appeared —— —— before me, the subscriber, and makes oath that he delivered a true copy of the within citation to Geo. T. Todd, one of the attorneys of record of the defendant in error, James K. McDowell, in the case of Jas. K. McDowell *v.* The Pacific Express Company.

HAL. SINGLETON.

Subscribed and sworn to before me this the 21st day of May, 1890.

W. E. SINGLETON,
Clerk U. S. Circuit Court, Eastern District of Texas, at Jefferson.

7 In the Circuit Court of the United States for the Eastern District of Texas, Holding Sessions at Jefferson, in the Fifth Circuit.

JAMES K. McDOWELL
vs.
THE PACIFIC EXPRESS COMPANY *et al.*

To the honorable the circuit court of the United States for the eastern district of Texas, in the fifth circuit, holding sessions at Jefferson, in the circuit and district aforesaid:

The petition of James K. McDowell, who resides in the county of Camp, in the State and eastern district of Texas, and who is hereinafter styled the plaintiff hereto—

Complaining of the Pacific Express Company, a corporation chartered, created, and existing under the laws of the State of Nebraska and doing business in Texas as an express company and common carrier; and also complaining of the said Pacific Express Company; and also complaining of one H. Bullbrook, whose name is otherwise unknown to plaintiff, who resides in the county of Rockwall, in the State of Texas, but who at the time of the perpetration of the wrongs and injuries hereinafter complained of was a resident citizen of the county of Camp, in the State and eastern district of Texas; and also complaining of the said H. Bullbrook, whose residence is and was as last aforesaid, as agent for the said defendant, The Pacific Express Company; and also complaining of other persons, whose names cannot now be furnished to the court, the said Pacific Express Company and the said H. Bullbrook and the said other persons being hereinafter designated as defendants to this action. For cause of action plaintiff respectfully represents and shows that on and before the 2nd day of November, A. D. 1888, the said plaintiff was a candidate for the official position of justice of the peace—the same being then and there an elective office of honor, profit, trust, and emolument under the laws of the State of Texas—in and for

8 precinct numbered one (1), the same being then and there a legally established justice precinct of, in, and for the said county of Camp, in the State and eastern district of Texas; that said plaintiff was legally qualified and eligible to be a candidate for and to be voted for and to be elected to and in all manners and things to legally discharge and perform all duties incident and appertaining to said office; that on and before the said 2nd day of November, A. D. 1888, the said plaintiff made legal efforts to be elected to said office by addressing the people at public meetings and by perfecting political organizations and by other legal methods; that the election at which plaintiff was such candidate for said office was a general election held legally in the State of Texas and in all the counties thereof, including the said county of Camp, on the 6th day of November, A. D. 1888; that by reason of the efforts, popularity, character, standing, and competency of said plaintiff for said office a large majority of the qualified voters of said precinct would have voted for plaintiff for said office at said general election; that but for the facts hereinafter stated plaintiff would have been elected

to said office by a large majority of the votes of the qualified electors and voters of said precinct, which fact was then and there well known to all the defendants hereto; that the said Pacific Express Co., through and by its officers, agents, employees, and servants, and the said Bulbrook, in his individual capacity and as agent for said Pacific Express Company, and the said other unknown persons and parties, well knowing that a large majority of the qualified electors and voters of said precinct, in said county, would have voted for plaintiff for said office at said general election, did unlawfully—the said Pacific Express Company by and through its officers, agents, employés, and servants, and the other defendants in their joint and several corporeal entities and capacities—*did unlawfully*, on and before the said 6th day of November, A. D. 1888, and in the county and district aforesaid, and before the expiration of one year next before the filing hereof, unlawfully, wilfully, wickedly, maliciously, wrongfully, and fraudulently conspire, confederate, and combine together to defeat the election of plaintiff to said office by unlawful means and methods at said general election, and that in order to carry into effect the object of the conspiracy aforesaid the said defendant, H. Bullbrook, and the other defendants hereto, save and except the Pacific Express Company, on and before the day of said general election, and in the precinct, county, and district aforesaid, did threaten to take the life of plaintiff should plaintiff continue to be a candidate for or be elected to said office, and did also, at the time and place aforesaid and within the jurisdiction of this court, *did* threaten to take the life of plaintiff as such candidate, and did also threaten to take the lives of and to kill, murder, and hang the members of the political organizations, both individually and in their organized capacities, who and which were supporting and advocating and intended to vote for plaintiff for said office at said general election; and the said defendants did also, for the purpose and with the intent aforesaid, at public meetings and private gatherings, notify plaintiff and other members of the political organizations whereof plaintiff was a member to leave the county of Camp aforesaid, and threatened to kill and murder said plaintiff and other members of said political organizations with death by hanging should plaintiff and other members of said political organizations fail to obey the imperial and imperious decrees and mandates of said defendants, with the exceptions aforesaid, and fail and refuse to leave the aforesaid county of Camp in compliance therewith; and that said defendants, with the exceptions aforesaid, on and before the said 6th day of November, A. D. 1888, did other unlawful and violent and wicked and fraudulent and corrupt things, all of which will be legally proved before the court and jury upon trial hereof, in order to carry into effect the object of the conspiracy aforesaid and to defeat the election of plaintiff by fraud to said office at said general election.

Plaintiff further alleges that by reason of the facts hereinbefore alleged and by reason of the facts hereinafter alleged, all of which facts were done and performed as before, and part of those hereinafter stated, by said defendants in order to carry into effect the

object of the conspiracy aforesaid and to prevent plaintiff by fraud from receiving a majority of the votes of the legally qualified electors and voters of said precinct, in said county, for said office at said general election, it became and was impossible for plaintiff or the members of the political organizations to which plaintiff belonged to have legal or proper ballots or election tickets, with the name of plaintiff thereon as a candidate for said office at said general election, prepared or printed at the town of Pittsburgh, the county-seat of Camp county, Texas, or at any other town or place nearer thereto than the town of Jefferson, in the county of Marion, in the State and eastern district of Texas, a distance of about forty miles by rail.

Plaintiff further alleges that the defendant The Pacific Express Company was, on the 2nd day of November, A. D. 1888, owning, controlling, operating a line of express route for the carriage
11 and delivery of such commodities as can be and generally are transported and delivered by such companies from the city of Jefferson, in the county of Marion, in the State and eastern district of Texas, to the town of Pittsburgh, in the county of Camp, in the State and eastern district of Texas, a distance of about 40 miles by rail; that said defendant's said line of express from Jefferson to Pittsburgh aforesaid was carried by railroad transportation.

Plaintiff further alleges that on the said 2nd day of November, A. D. 1888, and at the date of the filing hereof, said defendant company had and still has branch offices and places of business in the city of Jefferson and the town of Pittsburgh aforesaid; that on the 2nd day of November, A. D. 1888, one W. E. Singleton forwarded to plaintiff and his authorized agents and supporters, at the instance of plaintiff and his said agents and under the usual contract for speedy and safe transmission and delivery with the said Pacific Express Company, its officers, agents, and employés, by the express line of said company, from the city of Jefferson to the town of Pittsburgh, a certain package, of the value of ten ($10) dollars, containing five thousand (5,000) election tickets, each of which said tickets had the name of plaintiff printed thereon as the sole candidate for the said office of justice of the peace in and for precinct numbered one (1), the same being then and there a legally established justice's precinct in and for Camp county, Texas, and the said office of justice of the peace aforesaid being then and there an elective office of honor, profit, trust, and emolument, known and recognized as such by the laws of the State of Texas; that the perquisites of said office amount to about the sum of fifteen hundred ($1,500) dollars per year and the term of service two years, and for which office plaintiff
was then and there a candidate, to be voted for at said general
12 election for and by the legally qualified electors and voters of said precinct, which was then and there a legally established voting precinct in the county of Camp aforesaid, at said general election, which was legally had at and in the county of Camp and at and in all the counties of and in the State of Texas on the 6th day of November, A. D. 1888; that under and by virtue of the contract made by said Singleton, as the agent for plaintiff, and the said Pacific Express Company, by and through its officers, agents, and

employés, at the time of the shipment of said package over said express route of said defendant company, it become and was the duty of the said Pacific Express Company to deliver said package to plaintiff, his authorized agents, friends, and political supporters, immediately after its arrival at the town of Pittsburgh aforesaid; that immediately after the shipment of said package said Singleton advised the agents, friends, and political supporters of plaintiff for said office at Pittsburgh that the same had been so shipped over the express line of the said Pacific Express Company; that plaintiff, his agents and supporters, relying upon the fulfillment of the contract so made and entered into by and between said Singleton, as agent for plaintiff, and the said Pacific Express Company, by and through its officers, agents, and servants, had reason to believe and did believe that said package would be safely delivered to the agents, friends, and political supporters of plaintiff at Pittsburgh, Texas, by the employés and agents of said defendant company at the town of Pittsburgh aforesaid; that although said package containing said election tickets arrived at the office of the said defendant company at Pittsburgh before the day of said general election, to wit, the said 6th day of November, A. D. 1888, yet

13 in consequence of the negligence and fraud of said defendant company, through its officers, agents, employés, and servants at the town of Pittsburgh aforesaid, which negligence and fraud was so perpetrated by said company, through its officers, agents, employés, and servants at the town of Pittsburgh aforesaid, for the unlawful purpose of carrying into effect the object of the conspiracy aforesaid, and to defeat the plaintiff by fraud at said election in said precinct in said county of Camp, the said package was not delivered to plaintiff or to any of his friends, agents, or political supporters at the town of Pittsburgh aforesaid before the said 6th day of November, A. D. 1888, the day of said general election; — plaintiff would have received a large majority of the votes of the legally qualified electors and voters in said precinct in said county of Camp for said office on said day of said general election; that plaintiff, his friends, agents, and political associates, relying upon the contract made by plaintiff, through his agent, W. E. Singleton, at Jefferson, Texas, with the defendant express company, as plaintiff, his agents, friends, and political supporters might lawfully do, plaintiff and his agents, friends, and associates waited, expecting the delivery of the five thousand election tickets to him and his friends, agents, and political associates at Pittsburgh, Camp county, Texas, where the same were to be used and voted, until it was too late to have printed or procured or distributed any other tickets for the use and benefit of plaintiff and his friends and supporters at the said election, and he, through his friends and agents, went to the office of the defendant company at Pittsburgh just before the said election day and demanded said tickets, when and where his said agent and political associates *was* informed by said defendant company and its agents, servants, and employés that said tickets were there, but had been abstracted and stolen from said office and

from the custody of the defendant company's agents and
14 employés at Pittsburgh, and that they were unable to deliver same and failed and refused to deliver them.

Plaintiff further alleges that only one local job-printing office existed in said town of Pittsburgh, and that said office refused to do any printing for plaintiff or his agents, friends, and political supporters, and claimed to have been broken up and "pied" by a mob on the night preceding the arrival of said tickets at Pittsburgh; by reason whereof plaintiff, through and by one of his friends and agents, was compelled to telegraph and also to take the first train to Tyler, in Smith county, Texas, and to travel some 75 miles to endeavor to replace said tickets, whereby this plaintiff and his agents, friends, and supporters had no printed tickets for use at the polls, besides being deprived of the assistance of his friends at the polls at said general election; by reason of all of which plaintiff failed to receive a majority of the votes of the legally qualified voters of said precinct in said county of Camp for said office at said general election, besides being out of pocket in the sum of $25.00, being the amount furnished by him to defray his friends' expenses to Tyler to attempt to substitute said tickets.

Plaintiff further alleges that the failure of the agents and employés of said defendant company to deliver said package of election tickets to plaintiff or his agents, friends, and political associates at Pittsburgh, Texas, before the said 6th day of November, A. D. 1888, which failure — the result of and in order to carry into effect the object of the conspiracy aforesaid and to prevent plaintiff by fraud from receiving a majority of the votes of the legally qualified electors and voters of said precinct in said county for said office at said general election, in pursuance of the object of said conspiracy so made and entered into by and between the said defendant company and the other defendants
15 herein named and alluded to, and was the result of gross and willful and criminal negligence and carelessness on the part of said defendant company, by and through its officers, agents, employés, and servants, and was a breach of the contract so made and entered into by and between the said Singleton, as agent for plaintiff, and the said defendant company on the part of said company.

Plaintiff further alleges that the defendant H. Bullbrook and other persons acting in his interest, under his direction, guidance, and control, whose names will be furnished to the court and jury upon trial hereof, in his individual capacity and as agent for said defendant company, he being then and there the local agent of said defendant company at the town of Pittsburgh aforesaid, each and all of whom was and were then and there acting together, present and in concert, aiding abetting, and assisting each other, did, after the arrival of said package of said tickets at the office of said defendant company at the town of Pittsburgh aforesaid, and for the purpose of carrying into effect the object of the conspiracy aforesaid, and of preventing plaintiff by fraud from receiving a majority of the votes of the legally qualified electors and voters of said precinct for said office, in said county of Camp, at said general election, abstract said

package of tickets from the office of the defendant company at Pittsburgh, Texas, before the day of said general election and after the arrival of said package of tickets at the office of the said defendant company at Pittsburgh, Texas, and destroyed and burned the same, so that neither this plaintiff or his agents, supporters, friends, and political advocates would have any of said tickets for use and distribution to the voters of the said county of Camp on the day of said general election; that the ticket so forwarded
16 by said Singleton, as agent for plaintiff, was what was known as a "special ticket," agreed to be supported and voted for by a majority of the legally qualified electors and voters of said precinct in said county on said day of said general election, and that from the facts and circumstances herein named it become and was impossible for plaintiff, his agents, friends, or political supporters, to have said tickets duplicated in time for use and distribution and voting to and by a majority of the voters of said precinct and county on the day of said general election; that the facts herein stated, all of which plaintiff is ready to verify upon trial hereof, and no other state of facts or circumstances, were the cause of and resulted in the failure of plaintiff to receive a majority of the votes of the legally qualified electors and voters of said precinct, in said county of Camp, for said office on said day of said general election; that all of said facts were well known or by reasonable diligence could have been known to the directory and management of the said Pacific Express Company.

By reason of the facts and circumstances herein narrated, plaintiff alleges that he has been damaged in the sum of $35.00—$10.00 for the value of said tickets and $25.00 expenses to Tyler to attempt to substitute the same—besides being deprived of the gratification, satisfaction, and legal right and pleasure of having his friends, who composed a majority of the legally qualified electors and voters of said precinct, in said county of Camp, voting for him, in said precinct and county, for said office at said general election, as well as having the satisfaction, pleasure, and legal right of gratifying a laudable, legal, just, and honorable ambition; that he has by reason of the premises endured great mental suffering, vexation, and anxiety; that he has been humiliated among his friends, neighbors,
17 and political supporters; that the acts of the defendants herein complained of would naturally and have implanted a sense of wrong and insult in the breast of this plaintiff, said acts herein complained of having been dictated, done, and performed from and in a spirit of wilful injustice, and by and from a deliberate intention on the part of all of said defendants to vex, annoy, degrade, and insult this plaintiff, to the actual damage of plaintiff in the sum of three thousand ($3,000) dollars, to which plaintiff is legally entitled by reason of the premises and for which he prays judgment against all of said defendants upon trial hereof.

Wherefore, in view of and by reason of the premises, plaintiff prays for citation against each and all of said defendants and for legal citation to Marion county, in the eastern district of Texas, to the said S. H. McCullough, the local agent of the defendant, The

Pacific Express Company, at Jefferson, in the eastern district of Texas, and that each and all of said defendants be cited to appear and answer hereto, and upon trial hereof that plaintiff do have and recover judgment against each and all of said defendants, jointly and severally, for the sum of three thousand and thirty-five ($3,035) dollars actual and the sum of fifteen hundred ($1,500) dollars exemplary damages, to all of which plaintiff is legally entitled by reason of the premises, and for all other relief, general — special, to which plaintiff may be legally entitled by reason of the premises; and will ever pray, &c.

EDWARD GUTHRIDGE,
GEO. T. TODD,
Att'ys for Plaintiff.

(Endorsed:) Filed August 16th, 1889. W. E. Singleton, clerk.

18 In the Circuit Court of the United States for the Eastern District of Texas, Holding Sessions at Jefferson, in said District.

J. K. McDowell
vs.
The Pacific Express Company *et al.*

And now comes the plaintiff in the above-entitled cause and files this his supplemental petition, and, reaffirming all the allegations in his original petition in this cause filed, contained, same as herein explained, respectfully shows to the court that said plaintiff is a resident citizen of the county of Camp, in the State and eastern district of Texas, and that the defendant, The Pacific Express Company, is a foreign corporation, chartered, created, and existing under the laws of the State of Nebraska and doing business in Texas, as alleged in said original petition, as an express company and common carrier, having a local agent at the city of Jefferson, in the State and eastern district of Texas, and within the jurisdiction of this hon. court, by reason whereof this hon. court, under the statutes in such cases made and provided, has jurisdiction to hear and determine the matters in controversy in this suit between this plaintiff and the defendant, the said Pacific Express Company; that by reason of the facts alleged and complained of in the original petition in this cause filed by this plaintiff the said plaintiff is legally entitled to have and recover judgment for damages to the amount and as prayed for by plaintiff in said original petition against the defendant, the said Pacific Express Company, by reason of the gross and willful and criminal negligence and carelessness of said defendant company, by and through its officers, agents, employés, and servants, in failing to deliver the package of election tickets to plaintiff or his agents at Pittsburgh, Texas, as set up and charged in said original petition, in violation of the contract for the speedy and safe transmission and delivery of the same
19 entered into and made by and between W. E. Singleton, as the agent for plaintiff, and the said defendant company at the

time such package of election tickets was so shipped at Jefferson, Texas, by said Singleton, as such agent for plaintiff, as stated in said original petition; and the said defendant company, by and through its officers, agents, and employees and servants, by reason of the facts alleged in the original petition in this cause filed by plaintiff and in manner and form as in said original petition stated, and as the result of gross, willful, criminal, and fraudulent negligence and carelessness, as in said original petition stated, violated the terms of said contract and failed to deliver said package of election tickets to plaintiff or his agents after the arrival of the same at Pittsburg, Texas, as charged in said original petition; by reason whereof the said defendant company became and was and is legally liable to plaintiff for actual and exemplary damages, to the amount and as prayed for in said original petition, for such breach of contract, and for which damages plaintiff here and now prays judgment against said defendant company for such breach of said contract as prayed for and to the amount prayed for in plaintiff's original petition.

Plaintiff further alleges that by a clerical inadvertency judgment is erroneously prayed for in said original petition against the other persons therein named and alluded to as defendants thereto, whereas in truth and fact such persons, each and all of them, so named and alluded to in said petition as such defendants, save and except the defendant company, are not proper parties to this suit and, with one exception, Bullbrook, had not been served with process therein, and are named and alluded to in such original petition as such defendants for the sole purpose of presenting the narrative of the cause of action of plaintiff against said defendant company intelligently and clearly before the court and jury upon trial hereof.

Wherefore plaintiff here and now dismisses his said suit against each and all of the persons so named and alluded to as defendants is said original petition, save and except the defendant, The Pacific Express Company; and by reason of the facts alleged in his original petition and by reason of the failure of said defendant company to deliver said package of election tickets to plaintiff or his agents at Pittsburg, Texas, in violation of the contract so to do, so made and entered into by and between the said Singleton, as agent for plaintiff, and the said defendant company at the time of the shipment of the same at Jefferson, Texas, as set up and charged in said original petition, plaintiff, upon trial hereof, prays for judgment for damages against the said defendant company to the extent and amount prayed for in said original petition, by reason of the premises, and for costs of suit and for general relief.

EDWARD GUTHERIDGE,
GEO. T. TODD,
Of Counsel for Plaintiff.

Endorsed: U. S. C. C. No. 314. James K. McDowell *vs.* The Pacific Express Company *et als.* Dismissed as to parties named in original petition and prayed for, &c. Filed September 19th, 1889. W. E. Singleton, clerk.

Citation in Circuit Court.

UNITED STATES OF AMERICA,
Eastern District of Texas, at Jefferson.

21 The President of the United States to the marshal of the eastern district of Texas, Greeting:

You are hereby commanded to summon the Pacific Express Company, by service on S. H. McCullough, agent of said company, who is a resident citizen of the county of Marion, in the eastern district of Texas, if to be found therein, to be and appear before the honorable circuit court of the United States, at a court to be holden in and for said district at Jefferson on the second Monday, being the 9th day, of September, A. D. 1889, to answer the petition and complaint of James K. McDowell, a resident citizen of the county of Camp and State of Texas, plaintiff, exhibited and filed in said court on the 16th day of August, A. D. 1889 (the file number of said suit being U. S. C. C., No. 314), against the Pacific Express Company and H. Bullbrook and other persons, defendants, of which petition you will serve the said H. McCullough, agent aforesaid, with the accompanying certified copy, and also with a true copy of this writ.

The nature of plaintiff's demand is as follows, to wit: A suit brought for damages in the sum of ($3,035.00) three thousand and thirty-five dollars actual and the sum of fifteen hundred ($1,500.00) dollars exemplary damages and for general and special relief and costs of suit.

Herein fail not, but have you then and there before said court this writ, with your action thereon, showing how you have executed the same.

Witness the Honorable Melville W. Fuller, Chief Justice
[SEAL.] of the Supreme Court of the United States, and the seal of the circuit court hereto affixed, at Jefferson, this 17th day of August, A. D. 1889, and the 114 year of our Independence.

Issue same day.

W. E. SINGLETON,
Clerk of the U. S. Circuit Court, E. D. T., at Jefferson.

22 Came to hand August 21st, 1889, and executed the same day by delivering a true copy of the within citation to S. H. McCullough in person, agent of the Pacific Express Company, together with a certified copy of plaintiff's original petition, at Jefferson, Marion county, Texas.

J. J. DICKERSON,
U. S. Marshal,
By W. F. SCOTT, *Deputy.*

Endorsed: U. S. C. C. No. 314. James K. McDowell *vs.* Pacific Express Company *et al.* Citation for S. H. McCullough, defendant agent for the Pacific Express Company, Marion county. Issued 17th day of August, A. D. 1889. W. E. Singleton, clerk.

In the United States Circuit Court, at Jefferson, Texas.

JAMES K. McDOWELL
vs.
PACIFIC EXPRESS COMPANY.

Now comes the defendant, The Pacific Express Company, with the leave of the court, and amends its answer heretofore filed in this case. The said defendant says that this court hath no jurisdiction to hear and determine this cause, upon which it prays judgment for the following reasons, to wit:

1st. The petition fails to show affirmatively the jurisdiction of the court.

2nd. The facts stated in the petition, if true, show that the plaintiff has not been damaged in the sum exceeding two thousand dollars, for that actual damages are not recoverable for injury to the feelings, whether the action be considered as one in tort or
23 for breach of contract, there being no allegation of physical pain or bodily injury and the remaining claim of thirty-five dollars, alleged actual damages, and fifteen hundred dollars, exemplary damages, being insufficient to confer jurisdiction upon this court.

3rd. The facts stated in the petition, if true, show that the plaintiff had not been damaged in a sum exceeding two thousand dollars, for that the claim to exemplary damages is insufficient in law, because there is no allegation that the acts of Bullbrook were committed originally by the direction of the defendant, but, on the contrary, such allegations as are made show the very opposite, and because the allegation of plaintiff in the supplemental petition, that this defendant ratified the acts of Bullbrook by retaining him in its employ, is insufficient, for that the facts stated show that the said Bullbrook acted beyond the scope of his agency; that said acts were not done in the interest of this defendant or to further any interest of this defendant, and that the said acts of Bullbrook were therefore not the subject of ratification.

4th. The allegation in plaintiff's petition of injury to his feelings and for exemplary damages were fraudulently and untruthfully made for that purpose and with the intent of illegally and fraudulently conferring jurisdiction upon this court; all of which appears upon the face of said petition, and which said facts this defendant is ready to verify.

Subject to the foregoing exceptions and pleas to the jurisdiction, this defendant comes and says that the plaintiff's petition is not sufficient in law, and upon this it prays the judgment of the court; and, specially excepting thereto, the defendant says that said petition is insufficient in law for the following reasons, to wit:

1st. The petition shows that the consignor of the package
24 was one W. E. Singleton; that the consignee of the package was one J. L. Fore; that the plaintiff herein was not a party to the contract of carriage and the defendant owed him no duty, nor is there any allegation that defendant knew that plaintiff claimed any interest in said package.

2nd. The damages alleged to have accrued to plaintiff by reason of a supposed injury to his feelings, etc., are too remote and indefinite; do not naturally arise from a breach of contract of carriage; are not the subject of litigation; were not contemplated by said contract, and cannot be recovered as actual damages in this action, and, as a consequence, this court is left without jurisdiction in amount.

3rd. The petition does not show that the plaintiff was deprived of any legal right to which he was entitled.

4th. The petition shows affirmatively that the actions of one Bullbrook, alleged to be the agent of the defendant, were beyond the scope of his agency; were not done in the interest nor for the benefit of this defendant, and for which this defendant is not liable for exemplary damages.

And, answering herein, defendant denies all and singular the allegations in the plaintiff's petition and puts itself upon the country.

And, answering herein specially, the defendant shows to the court that it never made any such contract with the plaintiff as is alleged in said petition, and never knew him in any such contract as there is alleged, and had no knowledge that plaintiff was interested in said package, and this ~~plaintiff~~ owed plaintiff no duty, as a carrier or otherwise, with reference to such package as is described in the plaintiff's petition.

And, further specially answering, the defendant says that it supposes the plaintiff is suing for damages with reference to a package committed to defendant by W. E. Singleton on or about November the 2nd, 1888, at Jefferson, Texas, and addressed to J. L. Fore, Pittsburg, Texas; that, if so, plaintiff's was not a party to the contract of carriage and was wholly unknown to defendant therein; that, as is alleged in the plaintiff's petition, the said W. E. Singleton put upon the said package and represented to the agent at Jefferson that the said package was of the value of ten dollars, and the defendant then believed and still believes that such was *of* the true value of said package; but defendant avers that if such was not the true and just value of said package, then the defendant says that it was a part and parcel of said contract with Singleton, as with all other shippers over its line, by custom and usage, with which said Singleton was familiar, that the defendant is not to be held liable for any loss or damages except as forwarders only, nor for loss or damage of any box, package, or thing for over fifty dollars unless the true and just value thereof is stated, and that *if* defendant shall not be liable for any claim of whatever nature arising from said contract unless such claim shall be presented in writing within sixty days from date of said contract, and defendant shows that no such claim has ever been presented to it by plaintiff or any person for him.

And, further specially answering, the defendant says that if it ever had committed to its care for carriage the package described in plaintiff's petition, then it says it used all legal and proper diligence to carry and deliver the same to the consignee, and that if the same was not duly delivered it was by no fault of the defendant

or its agents or employees, either at all or while acting in the scope of their employment; that the same care and diligence was used with reference to this package as all others of a like kind and character, and that if the same were not delivered or was stolen it was not caused by any want of care on the part of defendant or its agents and employees.

26 And, further answering, defendant avers that plaintiff had a full supply of election tickets at the election at which he was a candidate; that the tickets lost or stolen, if true, were duplicated at once and in time to be used at the election by plaintiff, and were in fact used by him, and that all the legal and qualified voters of said county and precinct who desired to do so voted at the said election for said office for which the plaintiff was a candidate; that the plaintiff was defeated and his feelings injured and his ambition failed of gratification from no fault of the defendant, but from the deliberate judgment of the voters of said county and precinct in the exercise of their right of suffrage.

And, further answering specially, this defendant avers that if any damages accrued to the consignor or the consignee of the said package, under said contract, the same has long since been paid off and discharged, for that the value of said package, to wit, ten dollars, has been paid to W. E. Singleton, and by a judgment of this court, entered in February, 1889, whatever damages accrued to the consignee, J. L. Fore, were awarded him, and said judgment has been by the defendant long since fully paid off and satisfied.

The defendant therefore prays that this cause be dismissed for want of jurisdiction; that the plaintiff take nothing by his suit, and that the defendant go hence and recover its costs.

JOHN W. HOOPER,
BOOKHOUT AND CULBERSON,
Att'ys for Pacific Express Co.

THE STATE OF TEXAS, }
Marion County. }

C. A. Culberson, being sworn, on oath says that he is the attorney and agent for defendant, and that the matter stated in the
27 foregoing plea and exception to the jurisdiction of the court when stated to be true are true, and when stated on information he verily believes to be true.

C. A. CULBERSON.

Signed and sworn to this February 10th, 1890.

W. E. SINGLETON, *Clerk.*

Endorsed: U. S. C. C. No. 314. James K. McDowell *vs.* The Pacific Express Company. Defendant's 2nd amended answer. Filed February 10th, 1890. W. E. Singleton, clerk.

In U. S. Circuit Court. September Term, 1889.

JAMES K. McDOWELL
vs.
THE PACIFIC EXPRESS Co. *et al.* } # 314.

Now comes the plaintiff and declines to cross the interrogatories filed by defendant on the 13th September, after the beginning of this term, and says that there is no diligence used by defendants in getting the testimony of the witnesses. Plaintiff reserves all legal and proper exceptions to the interrogatories.

GUTHERIDGE AND TODD,
Att'ys for Pl'ffs.

And by way of supplemental petition plaintiff says that the defendant express company has ratified the action of its agent and the defendant, H. Bullbrook, by retaining him in its employment as its agent from the date of the injuries complained of in the original petition up to the time of filing of this suit, and still so retains him, as plaintiff is ready to verify.

GUTHERIDGE AND TODD,
Pl'ff's Att'ys.

28 Endorsed: U. S. C. C. No. 314. James K. McDowell *vs.* Pacific Express Company *et al.* Demurrer a- supplemental petition. Filed September 16th, 1889. W. E. Singleton, clerk.

JEFFERSON, TEXAS, *February 11th*, 1890.

We, the jury, find for the plaintiff for actual damages one hundred dollars. We also find for plaintiff five hundred dollars for exemplary damages—six hundred dollars in all.

(Signed) F. W. MORLEY, *Foreman.*

Endorsed: Verdict. Filed February 11th, 1890. W. E. Singleton, clerk.

JAMES K. McDOWELL
vs.
PACIFIC EXPRESS Co. } # 314.

This day, this cause coming further on to be heard, came all the parties thereto, and also came the jury hereinbefore impaneled and sworn; and the jury, after hearing more evidence and argument of counsel and received the charge of the court, retired from the bar of the court to consider of their verdict; and afterwards, on the same day, returned into open court their verdict in words and figures as follows, to wit:

"JEFFERSON, TEXAS, *February 11th*, 1890.

"We, the jury, find for plaintiff for actual damages one hundred dollars. We also find for plaintiff five hundred dollars for exemplary damages—six hundred dollars in all.

"T. W. MORLEY, *Foreman.*"

29 Wherefore it is considered by the court, ordered and adjudged and decreed, that the plaintiff, James K. McDowell, do have and recover of and from the defendant, The Pacific Express Company, the sum of one hundred dollars actual damages and the sum of five hundred dollars exemplary damages—six hundred dollars in all—and all costs in this behalf expended, for which execution may issue.

Further ordered that the officers of the court do have and recover of and from the parties herein all costs in this behalf expended, for which they can have execution.

In the U. S. Circuit Court, at Jefferson. February Tenth, 1890.

J. K. McDowell
vs.
Pacific Express Co. } # 314.

Be it remembered that on the trial of this cause on this day the defendant presented and urged the following exceptions and pleas to the jurisdiction, duly sworn to and subscribed, as follows:

1st. The petition fails to show affirmatively the jurisdiction of the court.

2nd. The facts stated in the petition, if true, show that the plaintiff has not been damaged in a sum exceeding two thousand dollars, for that actual damages are not recoverable for injury to the feelings, whether the action be considered as one in tort or for breach of contract, there being no allegation of physical pain or bodily injury, and the remaining claim of thirty-five dollars alleged actual damages and fifteen hundred dollars exemplary damages being insufficient to confer jurisdiction upon this court.

3rd. The facts stated in the petition, if true, show that the plaintiff has not been damaged in a sum exceeding two thousand dollars,
30 for that the claim to exemplary damages is insufficient in law, because there is no allegation that the acts of Bullbrook were committed originally by the direction of this defendant, but, on the contrary, such allegations as are made show the very opposite, and because the allegation of plaintiff in the supplemental petition, that this defendant ratified the acts of Bullbrook by retaining him in its employ, is insufficient, for that the facts stated show that the said Bullbrook acted beyond the scope of his agency; that said acts were not done in the interest of this defendant or to further any interest of this defendant, and the said acts of Bullbrook were therefore not the subject of ~~satisfaction~~ ratification.

4th. The allegations in plaintiff's petition of injury to his feelings xemplary damages were fraudulently and untruthfully the purpose and with the ~~intent~~ of illegally and fraudu- ferring the jurisdiction upon this court; all of which ap- n the face of said petition, and which said facts this de- ...s ready to verify; which said pleas and exceptions and each of them were by the court overruled and disallowed; to which ruling of the court the defendant at the time excepted and now here

tenders this its bill of exception and prays that the same be approved and filed as part of the record in this cause.

JOHN W. HOOPER,
BOOKHOUT AND CULBERSON,
Attorneys for Defendant.

Approved and allowed February, 1890.

ALECK BOARMAN, *Judge.*

Endorsed: U. S. C. C. No. 314. J. K. McDowell *vs.* Pacific Express Company. Filed February 13th, 1890. W. E. Singleton, clerk.

31 In the U. S. Circuit Court, at Jefferson.

J. K. McDOWELL
vs.
PACIFIC EXPRESS COMPANY. } # 314.

Now comes the defendant and moves the court to arrest the judgment in this cause, rendered on the eleventh day of February, 1890, for the following reasons:

1st. Because under the pleadings, admitting the allegations to be true, this court is without jurisdiction to enter the said judgment.

2nd. Because under the evidence and at the trial it was not disputed that the plaintiff had paid no part of the $35.00 mentioned in his petition for tickets and expenses, and under the law no actual damages of any kind were shown.

JOHN W. HOOPER,
BOOKHOUT AND CULBERSON,
Attorneys for Defendant.

Endorsed: U. S. C. C. No. 314. J. K. McDowell *vs.* Pacific Express Co. Motion in arrest of judgment. Filed February 12th, 1890. W. E. Singleton, clerk.

J. K. McDOWELL
vs.
PACIFIC EXPRESS COMPANY. } # 314.

FEBRUARY 13TH, 1890.

On this day came on to be heard the defendant's motion in arrest of judgment, and the court, having considered the same, is of the opinion that the law is against said motion.

It is therefore ordered and adjudged by the court that said motion in arrest of judgment be, and the same is hereby, overruled;
32 to which ruling the defendant excepts.

ALECK BOARMAN, *Judge.*

Endorsed: U. S. C. C. No. 314. James K. McDowell *vs.* Pacific Express Company. Order overruling motion in arrest of judgment. Filed February 13th, 1890. W. E. Singleton, clerk.

In the U. S. Circuit Court, at Jefferson.

J. K. McDowell
vs.
Pacific Express Company. } # 314.

February 12th, 1890.

Be it remembered that on this day the defendant's motion in arrest of judgment was presented to the court and urged. The court, having considered said motion, overruled same; to which ruling of the court the defendant excepts and tenders this its bill of exception and prays that the same be approved and filed as part of the record in this cause.

JOHN W. HOOPER,
BOOKHOUT AND CULBERSON,
Attorneys for Defendant.

Approved and allowed.

ALECK BOARMAN, *Judge.*

Endorsed: U. S. C. C. No. 314. James K. McDowell *vs.* Pacific Express Company. Defendant's bill of exception No. 2. Filed February 13th, 1890. W. E. Singleton, clerk.

In the Supreme Court of the United States.

Error to United States Circuit Court for the Eastern District of Texas.

33 Pacific Express Company, —— in Error,
vs.
James K. McDowell, Defendant in Error. } Assignment of Errors.

The plaintiff in error assigns the following as error committed on the trial of this cause in the court below:

First. The court erred in overruling the second plea and exception to the jurisdiction of the court below, as shown by bill of exception No. 1; which said plea and exception is as follows, to wit;

"The facts stated in the petition, if true, show that the plaintiff had not been damaged in a sum exceeding two thousand dollars, for that actual damages are not recoverable for injury to the feelings, whether the action be considered as one in tort or for breach of contract, there being no allegation of physical pain or bodily injury; and the remaining claim of thirty-five dollars alleged actual damages and fifteen hundred dollars exemplary damages being insufficient to confer jurisdiction upon this court."

Second. The court erred in overruling the third plea and exception to the jurisdiction of the court below, as shown by bill of exception No. 1; which said plea and exception is as follows, to wit:

"The facts stated in the petition, if true, show that the plaintiff had not been damaged in a sum exceeding two thousand dollars, for that the claim to exemplary damages is insufficient in law, be-

cause there is no allegation that the acts of Bullbrook were committed originally by direction of this defendant, but, on the contrary, such allegations as are made show the very opposite; and because the allegation of plaintiff in the supplemental petition, "that this defendant ratified the acts of Bullbrook by retaining him in its employ," is insufficient, for that the facts stated show that the said Bullbrook acted beyond the scope of his agency; that the
34 said acts were not done in the interest of this defendant, or to further any interest of this defendant, and the said acts of Bullbrook were, therefore, not the subject of ratification."

Third. The court erred in overruling the fourth plea and exception to the jurisdiction, as shown by bill of exception No. 1; which said plea and exception is as follows, to wit:

"The allegations in plaintiff's petition of injury to his feelings and for exemplary damages were fraudulently and untruthfully made for the purpose and with the intent of illegally and fraudulently conferring jurisdiction upon this court; all of which appears upon the face of said petition, and which said facts this defendant is ready to verify;" and for that the court refused to hear evidence upon said last plea to the jurisdiction, but peremptorily overruled and disallowed it.

Fourth. The court erred in overruling the motion in arrest of judgment made by the plaintiff in error, as shown by bill of exception No. 2; which said motion in arrest of judgment is, so far as complained of here, as follows, to wit:

"Because under the pleadings, admitting the allegation to be true, this court is without jurisdiction to enter the said judgment."

Wherefore, and by reason of the errors so committed by the court below, the plaintiff in error prays this court to reverse the judgment of the United States circuit court for the eastern district of Texas in this cause.

JNO. BOOKHOUT AND C. A. CULBERSON,
Attorneys for Plaintiff in Error in the United States Supreme Court.

Endorsed: U. S. C. C. No. 314. Pacific Express Company, plaintiff in error, *vs.* James K. McDowell, defendant in error.

35 *Cost Bill.*

U. S. C.

JAMES K. McDOWELL *vs.* PACIFIC EXPRESS COMPANY. } No. 314.

August	16th, 1889. To F. and E. and C. petition		40
	" iss'g original citation, C. & E. Ex.		$1 30
	" iss'g copy citation, C. & S. Ex.		1 00
	" copy of petition, C. & S, Ex.		4 50
	" iss'g original cit., C. & E., Bullbrook		1 30
	" " copy " C. & S., "		1 00
	" copy of pet., C. & S., "		4 50
	" F. & E. ret. citat., express Co.		40
	" " " " Bullbrook		40

August	17th, 1889.	To iss'g 2 spa.	$0 80		
September	9th, "	" ent. ret. spa.	40		
		" iss'g 2 spa., defendant	80		
"	10th, "	" enter. and fil. ret. spa.	40		
		" fil. answer	10		
		" " notice to set case	10		
		" " giving notice to defendant	25		
"	12th, "	" " notice to defendant	10		
		" making copy of notice, C. & S.	95		
		" precept to serve notice	1 00		
"	13th, "	" fil. ret. precept	40		
		" " notice and int.	10		
		" iss'g orig. notice to int., C. & S.	1 30		
		To iss'g copy notice to int., C. & S.	1 00		
					$22 40
36					
		Brought forward			22 40
September	13th, 1889.	To copy of notice and int., C. & S.	$1 70		
"	14th, "	" F. and E. C. ret. precept	40		
		" fil. prep., .10; iss'g 1, .40	50		
		" fil. int. to Bullbrook	10		
		" F. & E. and C. ret. prep., McDowell	40		
"	15th, "	" fil. int. to Bullbrook	10		
"	16th, "	" " precipe, .10; iss'g spa., .40	50		
"	11th, "	" iss'g orig. notice, C. & S.	1 30		
		" " copy of " C. & S.	1 00		
		" making copy of int'y, C. & S.	90		
"	18th, "	" fil. precipe, .10; iss'g spa., .40	50		
		" iss'g com's, dep't. T. A. King	1 30		
		" copy of int. & notice, 8 fol., C. & S.	1 70		
		" iss'g com's, dep't. G. L. Dempsey	1 30		
		" copy of int. and notice, C. & S.	1 70		
		" iss'g com's, dep't. H. Bullbrook	1 30		
September	19th, "	" copy inter-og. and notice, C. & S.	1 40		
		" fil. precipe	10		
		" iss'g spa. *duces tecum*, county judge Camp county	1 00		
"	20th, "	" fil. 3 papers	30		
"	21st, "	" " precipe *duces tecum*	10		
		" " iss'g spa. *duces tecum*	1 00		
"	23rd, "	" F. & E. & C. ret. 4 spa.	1 60		
		" " " " " 1 "	40		
"	24th, "	" writ of certif. to Jake Neal	85		
					21 45
		Carried forward			$43 85
37					
		Brought forward			$43 85
September	24th, 1889.	To writ of certificate, H. Hobson	$0 85		
		" " " " J. D. Bass	85		
		" " " " J. D. Stafford	85		
		" " " " R. D. Huey	85		
		" " " " Lockhart	85		
		" " " " J. L. Fore	85		
		" " " " J. A. Smith	85		
		" " " " W. A. Russell	85		
"	25th, "	" " " " W. F. J. Morgan	85		
"	27th, "	" " " " Ward Taylor	85		
		" " " " John T. Whitman	85		
"	23rd, "	" fil. 2 papers	20		
		" fil. 3 prep., .30; iss'g 3 spa., .40	1 50		
"	26th, "	" continuance	30		
		" F. & E. & C., 3 spa.	1 20		
		" fil. & enter. motion for cost	25		
"	24th, "	" fil., 10; oath & certif. to Culberson for continuance	35		

January	30th, 1890.	To	fil. prep., .10; iss'g 4 spa.	$2 10		
February	3rd, "	"	fil. precipe and iss. spa.	50		
	" "	"	" " " " " "	50		
		"	making 2 copies spa.	40		
"	" "	"	fil. precipe	10		
"	6th, "	"	iss'g 14 spa., .40	5 60		
		"	making copies 14 spa., .20	2 80		
		"	iss. precipe & spa.	50		
		"	making copy of spa.	20		
					$25	85
			Carried forward		$69	70

38

					69	70
February	6th, 1890.	To	fil. precipe, 7 spa.	$0 10		
		"	iss'g 7 spa., .40	2 40		
		"	making copy for 7 spa., .20	1 40		
"	10th, "	"	enter. ret. 16 spa., .40	6 40		
		"	" 7 " .40	1 40		
		"	" 3 " .40	1 20		
		"	fil. 2 amended answer	20		
		"	swearing C. A. Culberson	10		
		"	certificate and seal	50		
		"	approved cost bond	1 00		
		"	fil. cost bond	10		
		"	" judgment	10		
"	13th, "	"	verdict	10		
		"	" exceptions	10		
		"	" defendant's motion for new trial	10		
		"	" motion to arrest judgment	10		
		"	" bill of exception No. 2	10		
		"	" agreement	10		
		"	" bill of exception (No. 1)			
		"	" application for writ of error	10		
		"	" writ of error bond	10		
		"	" and iss'g citation, writ of error	1 30		
		"	" making copy, def't's att'y	1 00		
		"	" swearing officer & ret.	1 00		
		"	certificate and seal	50		
		"	" enter. ret. citation	40		
					19	90
			Carried forward		89	60

39

			Brought forward		$89	60
February	13th, 1890.	To	fil. & enter call, jury, & verdict	45		
		"	" " order def't to file answer	15		
		"	" order, motion for new trial	10		
		"	" " overruling arrest judgment	10		
		"	" " granting writ of error	10		
		"	" " allowance writ of error	10		
		"	" copy order new trial	45		
		"	" order arrest judgment	45		
		"	" judgment to supreme court	60		
		"	" docket and indexes	3 00		
		"	" .10, ctf.; .15, marshal's cost bill	35		
		"	issuing certificate, J. D. Bass	85		
		"	" " J. A. Smith	85		
		"	" " A. S. Zackery	75		
		"	" " L. C. Dupree	85		
		"	" " F. A. Lockhart	85		
		"	" " R. D. Huey	85		
		"	" " T. E. Russell	85		
		"	" " A. D. Bowie	85		
		"	" " W. F. J. Morgan	85		
		"	" " Ward Taylor	85		

		To issuing certificate, John T. Whitman	$0 85		
February	13th, 1890.	" " " W. I. Purnell	85		
		" " " W. A. Russell	85		
		" " " James K. McDowell	85		
		" " " Z. Bailey	85		
				$18 60	
		Carried forward			$108 20
40					
		Brought forward		108 20	
February	13th, 1890.	To iss'g witness' certificate to W. E. Farmer	85		
		" issuing certificate to J. L. Fore	85		
		" making transcript to Supreme Court	20 97		
		" witness' fees	243 50		
		" Marshal Dickerson's costs	58 56		
				$324 73	
		To total			$432 93

Certificate.

EASTERN DISTRICT OF TEXAS, *ss:*

I, W. E. Singleton, clerk of the circuit court of the United States for said eastern district of Texas, holding session at Jefferson, Texas, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein James K. McDowell is plaintiff and The Pacific Express Company is defendant, as the same appears from the files and records of said court now remaining in my custody and control.

Seal United States Circuit Court, Eastern District of Texas, at Jefferson.

In testimony whereof I have hereto set my hand and affixed the seal of said court, at my office, in the city of Jefferson, in said district, this 25th day of July, A. D. 1890.

(Signed) W. E. SINGLETON,
Clerk U. S. Circuit Court, E. D. T., at Jefferson.

Endorsed on cover: E. Texas C. C. U. S. No. 1335. The Pacific Express Company, plaintiff in error, *vs.* James K. Mc. Dowell. Filed October 3, 1890.

In the Supreme Court of the United States.

October Term, 1890.

THE PACIFIC EXPRESS CO., PLAINTIFF IN ERROR,

vs.

JAMES K. McDOWELL, DEFENDANT IN ERROR.

STATEMENT OF THE CASE.

On August 16, 1889, the defendant in error filed suit in the Circuit Court of the United States for the Eastern District of Texas, at Jefferson, against the plaintiff in error and H. Bullbrook, and certain other defendants not named, plaintiff alleging that Bullbrook and the unnamed defendants resided in the Eastern District of Texas. That part of the petition which undertakes to state the cause of action is here set out in full and is as follows:

"For cause of action plaintiff respectfully represents and shows that on and before the 2nd day of November, A. D. 1888, the said plaintiff was a candidate for the official position of Justice of the Peace, the same being then and there an elective office of honor, profit, trust and emolument, under the laws of the State of Texas, in and for Precinct No. one (1), the same being then and there a legally established justice precinct of, in and for the said county of Camp in the State and Eastern District of Texas. That said plaintiff was legally qualified and eligible to be a candidate for, and to be voted for, and to be elected to, and in all manner and things to legally discharge and perform all duties incident and appertaining to said office. That on and before the said 2nd day of November, A. D. 1888, the said plaintiff made legal efforts to be elected to said office by addressing the people at public meetings and by perfecting political organizations and by other legal methods. That the election at which plaintiff was such candidate for said office was a general election, held legally in the State of Texas, and in all the counties thereof, including the said county of Camp, on the 6th day of November, A. D. 1888. That by reason of the efforts, popularity, character, standing and competency of said plaintiff for said office, a large majority of the qualified voters of said precinct would have voted for plaintiff for said office at said general election. That but for the facts hereinafter stated plaintiff would have been elected to said office by a large majority of the votes of the qualified electors and voters of said precinct, which fact was then and there well known to all the defendants hereto. That

the said Pacific Express Company, through and by its officers, agents, employes and servants, and the said Bullbrook, in his individual capacity and as agent for said Pacific Express Company, and the said unknown persons and parties, well knowing that a large majority of the qualified electors and voters of said precinct in said county would have voted for plaintiff for said office at said general election, the said Pacific Express Company, by and through its officers, agents, employes and servants, and the other defendants in their joint and several corporeal entities and capacities did unlawfully, on and before the said 6th day of November, A. D. 1888, and in the county and district aforesaid, and before the expiration of one year next before the filing hereof, unlawfully, wilfully, wickedly, maliciously, wrongfully and fraudulently conspire, confederate and combine together to defeat the election of plaintiff to said office by unlawful means and methods at said general election, and that in order to carry into effect the object of the conspiracy aforesaid, the said defendant, H. Bullbrook, and the other defendants hereto, *save and except the Pacific Express Company*, on and before the day of said general election, and in the precinct and county and district aforesaid, did threaten to take the life of plaintiff should plaintiff continue to be a candidate for or be elected to said office, and did also at the time and place aforesaid, and within the jurisdiction of this court, threaten to take the life of plaintiff as such candidate, and did also threaten to take the lives of and kill, murder and hang the members of the political organizations, both individually and in their organized capacities, who

and which were supporting and advocating and intended to vote for plaintiff for said office at said general election; and the said defendants did also, for the purpose and with the intent aforesaid, at public meetings and private gatherings, notify plaintiff and other members of the political organizations whereof plaintiff was a member to leave the county of Camp aforesaid, and threatened to kill and murder said plaintiff and other members of said political organization with death by hanging should plaintiff and other members of said political organizations fail to obey the imperial and imperious decrees and mandates of said defendants, *with the exceptions aforesaid*, and fail and refuse to leave the aforesaid county of Camp in compliance therewith. And that said defendants, *with the exceptions aforesaid*, on and before the 6th day of November, A. D. 1888, did other unlawful and violent and wicked and fraudulent and corrupt things, all of which will be legally proved before the court and jury upon trial hereof in order to carry into effect the object of the conspiracy aforesaid, and to defeat the election of plaintiff by fraud to said office at said general election.

"Plaintiff further alleges that by reason of the facts hereinbefore alleged and by reason of the facts hereinafter alleged, all of which facts were done and performed as before and part of those hereinafter stated by said defendants in order to carry into effect the object of the conspiracy aforesaid and to prevent plaintiff by fraud from receiving a majority of the votes of the legally qualified electors and voters of said precinct in said county for said office at said general election, it became

and was impossible for plaintiff or the members of the political organizations to which plaintiff belonged to have legal or proper ballots or election tickets, with the name of the plaintiff thereon as a candidate for said office at said general election, prepared or printed at the town of Pittsburg, the county seat of Camp county, Texas, or at any other town or place nearer thereto than the town of Jefferson, in the county of Marion, in the State and Eastern District of Texas, a distance of about forty miles by rail.

"Plaintiff further alleges that the defendant, the Pacific Express Company, was on the 2nd day of November, A. D. 1888, owning, controlling and operating a line of Express route for the carriage and delivery of such commodities as can be and generally are transported and delivered by such companies from the city of Jefferson in the county of Marion, in the State and Eastern District of Texas, to the town of Pittsburg, in the county of Camp, in the State and Eastern District of Texas, a distance of about forty miles by rail; that said defendant's said line of Express from Jefferson to Pittsburg, aforesaid, was carried by railroad transportation.

"Plaintiff further alleges that on the said 2nd day of November, A. D. 1888, and at the date of the filing hereof, said defendant company had and still has branch offices and places of business in the city of Jefferson and the town of Pittsburg aforesaid; that on the 2nd day of November, A. D. 1888, one W. E. Singleton, forwarded to plaintiff and his authorized agents and supporters, at the instance of plaintiff and his said agents, and under

the usual contract for speedy and safe transmission and delivery, with the said Pacific Express Company, its officers, agents and employes, by the express line of said company from the city of Jefferson to the town of Pittsburg *a certain package of the value of ten dollars ($10) containing five thousand (5,000) election tickets*, each of which said tickets had the name of plaintiff printed thereon as the sole candidate for the said office of Justice of the Peace in and for precinct number one (No. 1), the same being then and there a legally established justice's precinct in and for Camp county, Texas, and the said office of justice of the peace aforesaid being then and there an elective office of honor, profit, trust and emolument, known and recognized as such by the laws of the State of Texas; that the perquisites of said office amount to the sum of about fifteen hundred dollars (1,500) per year, and the term of service two years, and for which office plaintiff was then and there a candidate to be voted for at said general election for and by the legally qualified electors and voters of said precinct, which was then and there a legally established voting precinct in the county of Camp aforesaid, at said general election which was legally had at and in the county of Camp, and at and in all the counties of and in the State of Texas, on the 6th day of November, A. D. 1888; that under and by virtue of the contract made by said Singleton, as the agent of plaintiff, and the said Pacific Express Company, by and through its agents, officers and employes, at the time of the shipment of the said package over said express route of said defendent company, it become and was the duty of the said Pacific

Express Company to deliver said package to plaintiff, his authorized agents, friends and political supporters immediately after its arrival at the town of Pittsburg aforesaid; that immediately after the shipment of said package, said Singleton advised the agents friends and political supporters of plaintiff for said office at Pittsburg that the same had been so shipped over the express line of the said Pacific Express Company; that plaintiff, his agents and supporters, relying upon the fulfillment of the contract so made and entered into by and between said Singleton, as agent for plaintiff, and the said Pacific Express company, by and through its officers, agents and employes, had reason to believe and did believe that said package would be safely delivered to the agents, friends and political supporters of plaintiff at Pittsburg, Texas, by the employes and agents of said defendant company at the town of Pittsburg, aforesaid; that although said package containing said election tickets arrived at the office of said defendant company at Pittsburg before the day of said general election, to-wit: the said 6th day of November, A. D. 1888, yet, in consequence of the negligence and fraud of said defendant company, through its officers, agents, employes and servants, at the town of Pittsburg aforesaid, which negligence and fraud was so perpetrated by said company through its officers, agents, employes and servants at the town of Pittsburg aforesaid for the unlawful purpose of carrying into effect the object of the conspiracy aforesaid, and to defeat the plaintiff by fraud at said election in said precinct in said county of Camp the said package was not delivered to plaintiff or to any of his friends,

agents or political supporters at the town of Pittsburg aforesaid before the said 6th day of November, A. D. 1888, nor has the said package been yet delivered to him or them or either of them by said company or its agents or employes; that had said package of election tickets been so delivered to the friends, associates or political supporters of plaintiff at the town of Pittsburg aforesaid, or to any or either of them, by said defendant company, before the said 6th day November, 1888, the day of said general election, plaintiff would have received a large majority of the votes of the legally qualified electors and voters in said precinct in said county of Camp for said office on said day of said general election; that plaintiff, his friends, agents and political supporters relying upon the contract made by plaintiff, through its agent, W. E. Singleton, at Jefferson, Texas, with the defendant express company, as plaintiff his agents, friends and political supporters might lawfully do plaintiff and his agents, friends and associates waited expecting the delivery of the five thousand election tickets to him and his friends, agents and political associates at Pittsburg, Camp county, Texas, where the same were to be used and voted until it was too late to have printed, procured or distributed any other tickets for the use and benefit of plaintiff and his friends and supporters at the said election and he through his friends and agents went to the office of the defendant company at Pittsburg just before the said election day and demanded said tickets, when and where his said agents and political associates were informed by said

defendant company and its agents, servants and employes that said tickets were there but had been abstracted and stolen from said office and from the custody of the defendant company's agents and employes at Pittsburg and that they were unable to deliver the same and failed and refused to deliver them."

"Plaintiff further alleges that only one local job printing office existed in said town of Pittsburg, and that said office refused to do any printing for plaintiff or his agents, friends and political supporters, and claimed to have been broken up and 'pied' by a mob on the night preceding the arrival of said tickets at Pittsburg, by reason whereof plaintiff, through and by one of his friends and agents was compelled to telegraph, and also to take the first train to Tyler, in Smith county, Texas, and to travel some seventy-five miles to endeavor to replace said tickets, whereby this plaintiff and his agents, friends and supporters, had no printed tickets for use at the polls, besides being deprived of the assistance of his friends at the polls at said general election, by reason of all of which plaintiff failed to receive a majority of the votes of the legally qualified voters of said precinct in said county of Camp, for said office at said general election; *besides being out of pocket in the sum of $25.00, being the amount furnished by him to defray his friend's expenses to Tyler to attempt to substitute said tickets.* Plaintiff further alleges that the failure of the agents and employes of said defendant company to deliver said package of election tickets to plaintiff or his agents, friends and political associates at Pittsburg, Texas, before the said 6th day of Novem-

ber, A. D. 1888, which failure was the result of and in order to carry into effect the object of the conspiracy aforesaid, and to prevent plaintiff by fraud from receiving a majority of the votes of the legally qualified electors and voters of said precinct in said county for said office at said general election in pursuance of the object of said conspiracy so made and entered into by and between the said defendant company and the other defendants herein named and alluded to, and was the result of gross and willful and criminal negligence and carelessness on the part of said defendant company by and through its officers, agents, employes and servants, and was a breach of the contract so made and entered into by and between the said Singleton, as agent for plaintiff and the said defendant company on the part of said company."

"Plaintiff further alleges that the defendant H. Bullbrook, and other persons acting in his interest, under his direction, guidance and control, whose names will be furnished to the court and jury upon trial thereof, in his individual capacity, and as agent for said defendant company, he being then and there the local agent of said defendant company at Pittsburg aforesaid, each and all of whom was and were then and there acting together, present, and in concert, aiding, abetting and assisting each other, did after the arrival of said package of said tickets at the office of said defendant company, at the town of Pittsburg aforesaid, and for the purpose of carrying into effect the object of the conspiracy aforesaid, and of preventing plaintiff by fraud from receiving a majority of the votes of the legally

qualified electors and voters of said precinct for said office in said county of Camp, at said general election, abstract said package of tickets from the office of said defendant company at Pittsburg, Texas, before the day of general election, and after the arrival of said package of tickets at the office of said defendant company at Pittsburg, Texas, and destroyed and burned the same so that neither this plaintiff or his agents, supporters, friends and political advocates would have any of said tickets for use and distribution to the voters of the said county of Camp on the day of said general election; that the tickets so forwarded by said Singleton, as agent for plaintiff, was what was known as a 'special ticket' agreed to be supported and voted for by a majority of the legally qualified electors and voters of said precinct in said county on said day of said general election, and that from the facts and circumstances herein named, it became and was impossible for plaintiff, his agents, friends or political supporters to have said tickets duplicated in time for use and distribution, and voting to and by a majority of the voters of said precinct and county on the day of said general election; that the facts herein stated, all of which plaintiff is ready to verify upon trial hereof and no other state of facts and circumstances, were the cause of and resulted in the failure of plaintiff to receive a majority of the votes of the legally qualified voters and electors of said precinct in said county of Camp, for said office on said day of said general election; that all of said facts were well known, or by reasonable diligence could have been known, to the

directory and management of the said Pacific Express Company."

"By reason of the facts and circumstances herein narrated, plaintiff alleges *that he has been damaged in the sum of thirty-five dollars, ten dollars for the value of said tickets, and twenty-five dollars expenses to Tyler to attempt to substitute the same, besides being deprived of the gratification, satisfaction and legal right and pleasure of having his friends, who composed a majority of the legally qualified electors and voters of said precinct in said county of Camp, voting for him in said precinct and county, for said office at said general election, as well as having the satisfaction, pleasure and legal right of gratifying a laudable, legal, just and honorable ambition. That he has by reason of the premises endured great mental suffering, vexation and anxiety; that he has been humiliated among his friends, neighbors and political supporters; that the acts of the defendants herein complained of, would naturally, and have, implanted a sense of wrong and insult in the breast of this plaintiff, said acts herein complained of having been dictated, done and performed from and in a spirit of willful injustice, and by and from a deliberate intention on the part of all of said defendants to vex, annoy, degrade and insult this plaintiff to the actual damage of plaintiff in the sum of three thousand dollars*, to which plaintiff is legally entitled by reason of the premises, and for which he prays judgment against all of said defendants upon trial hereof."

"Wherefore, in view of and by reason of the premises plaintiff prays for citation against each and all of said defendants and for legal citation to Marion county in the eastern district of Texas to the said S. H. McCullough, the local agent of the defendant, the Pacific Express Company, at Jefferson, in the eastern district of Texas, and that each and all of said defendants be cited to appear and answer hereto, and that upon trial hereof plaintiff do have and recover judgment against each and all of said defendants, jointly and severally, *for the sum of three thousand thirty five dollars actual, and the sum of fifteen hundred dollars exemplary damages*, to all of which plaintiff is legally entitled by reason of the premises, and for all other relief, general and special, to which plaintiff may be legally entitled by reason of the premises, and will ever pray, and, etc."

The plaintiff in error appeared and filed exceptions to the jurisdiction, among others for the reason that some of the defendants were resident citizens of the same State and district with the defendant in error, namely, the Eastern District of Texas. To relieve the case of this feature the defendant in error on September 19, 1889, filed what is styled a supplemental petition, which in effect dismissed the case against all the defendants in the court below except the Pacific Express Company. This supplemental petition is also set out in full and is as follows:

"And now comes the plaintiff in the above-entitled cause and files this his supplemental petition, and reaffirming all the allegations in his original petition in this cause filed, contained, save as herein explained, respect-

fully shows to the court that said plaintiff is a resident citizen of the county of Camp in the State and eastern district of Texas, and that the defendant, the Pacific Express Company, is a foreign corporation, chartered, created and existing under the laws of the State of Nebraska, and doing business in Texas, as alleged in said original petition, as an Express Company and common carrier, having a local agent at the city of Jefferson, in the State and eastern district of Texas, and within the jurisdiction of this honorable court, by reason whereof this honorable court, under the statutes in such cases made and provided, has jurisdiction to hear and determine the matters in controversy in this suit between this plaintiff and the defendant, the said Pacific Express Company. That by reason of the facts alleged and complained of in the original petition in this cause filed by this plaintiff the said plaintiff is legally entitled to have and recover judgment for damages to the amount and as prayed for by plaintiff in said original petition against the defendant, the said Pacific Express Company, by reason of the gross and willful and criminal negligence and carelessness of said defendant company, by and through its officers, agents, employes and servants in failing to deliver the package of election tickets to plaintiff or his agents at Pittsburg, Texas, as set up and charged in said original petition, in violation of the contract for the speedy and safe transmission and delivery of the same, entered into and made by and between W. E. Singleton, as the agent for plaintiff, and the said defendant company at the time such package of election tickets was so shipped at Jefferson, Texas, by said Singleton

as such agent for plaintiff as stated in said original petition; and the said defendant company by and through its officers, agents, employes and servants by reason of the facts alleged in the original petition in this cause filed by plaintiff and in manner and form as in said original petition stated and as the result of gross, willful, criminal and fraudulent negligence and carelessness, as in said original petition stated, violated the terms of said contract. and failed to deliver said package of election tickets to plaintiff or his agents after the arrival of the same at Pittsburg, Texas, as charged in said original petition; by reason whereof the said defendant company became and was and is legally liable to plaintiff for actual and exemplary damages to the amount and as prayed for in said original petition for such breach of said contract, and for which damages plaintiff here and now prays judgment against said defendant company, for such breach of said contract as prayed for, and to the amount prayed for in plaintiff's original petition."

"Plaintiff further alleges that by a clerical inadvertency judgment is erroneously prayed for in said original petition against the other persons therein named and alluded to as defendants thereto; whereas in truth and in fact such persons, each and all of them, so named and alluded to in said petition as such defendants, save and except the defendant company, are not proper parties to this suit and, with one exception, Bullbrook, have not been served with process therein, and are named and alluded to in such original petition as such defendants for the sole purpose of presenting the narrative of the cause of action of plaintiff against said defendant com-

pany intelligently and clearly before the court and jury upon trial hereof. Wherefore, plaintiff here and now dismisses his said suit against each and all of the persons so named and alluded to as defendants in said original petition, save and except the defendant, the Pacific Express Company. And by reason of the facts alleged in his original petition, and by reason of the failure of said defendant company to deliver said package of election tickets to plaintiff or his agents at Pittsburg, Texas, in violation of the contract so to do, so made and entered into by and between the said Singleton, as agent for plaintiff, and the said defendant company, at the time of the shipment of the same at Jefferson, Texas, as set up and charged in said original petition."

"Plaintiff upon trial hereof prays for judgment for damages against the said defendant company to the extent and amount prayed for in said original petition by reason of the premises and for costs of suit and for general relief."

The Pacific Express Company replying to these petitions filed its amended answer, in which is included its verified plea to the jurisdiction of the court. So much of said answer as presents the question of jurisdiction is as follows:

"Now comes the defendant, the Pacific Express Company, with leave of the court, and amends its answer heretofore filed in this case:

The said defendant says that this court hath not jurisdiction to hear and determine this cause, upon

which it prays judgment, for the following reasons, to wit:

1st: The petition fails to show, affirmatively, the jurisdiction of the court.

2nd: The facts stated in the petition, if true, show that the plaintiff has not been damaged in a sum exceeding two thousand dollars, for that actual damages are not recoverable for injury to the feelings, whether the action be considered as one in tort or for breach of contract, there being no allegation of physical pain or bodily injury, and the remaining claim for thirty-five dollars, alleged actual damages, and fifteen hundred dollars exemplary damages, being insufficient to confer jurisdiction upon this court.

3d: The facts stated in the petition, if true, show that the plaintiff has not been damaged in a sum exceeding two thousand dollars, for that the claim to exemplary damages is insufficient in law, because there is no allegation that the acts of Bullbrook were committed, originally, by the direction of the defendant, but on the contrary such allegations as are made show the very opposite, and because the allegation of plaintiff in the supplemental petition that this defendant ratified the acts of Bullbrook by retaining him in its employ is insufficient, for that the facts stated show that the said Bullbrook acted beyond the scope of his agency; that said acts were not done in the interest of this defendant, or to further any interest of this defendant, and that the acts of said Bullbrook were therefore, not the subjects of ratification.

4th: The allegations in plaintiff's petition of an injury to his feelings and for exemplary damages were fraudulently and untruthfully made for the purpose, and with the intent of illegally and fraudulently conferring jurisdiction upon this court, all of which appears upon the face of said petition, and which said facts this defendant is ready to verify."

The defendant in error in response to the answer of plaintiff in error thereupon filed his second supplemental petition, in which he charged that plaintiff in error had retained Bullbrook in its employ as agent at Pittsburg after the loss of the election tickets and was consequently liable for exemplary damages. The court overruled the exceptions of plaintiff in error to the jurisdiction, to which a bill of exceptions was reserved, and on February 10th, 1890, judgment was rendered against plaintiff in error for six hundred dollars, one hundred dollars actual and five hundred dollars exemplary damages. On February 12th, 1890, the plaintiff in error moved in arrest of judgment on the ground, among others, that "under the pleadings, admitting the allegations to be true, this court is without jurisdiction to enter said judgment," which motion was overruled, and to which ruling an exception was reserved. A writ of error was granted, which was regularly perfected, and the case is brought to this court under the act of February 25th, 1889. (25 U. S. Stats. at Large 693). Necessarily the assigment of errors presents only the question of jurisdiction, and the attention of the court is respectfully invited thereto in the order in which they appear in the assignment.

First Assignment of Error.

"The court erred in overruling the second plea and exception to the jurisdiction of the court below, as shown by bill of exception No. 1, which said plea and exception is as follows, to-wit: "The facts stated in the petition, if true, show that the plaintiff has not been damaged in a sum exceeding two thousand dollars, for that actual damages are not recoverable for injury to the feelings, whether the action be considered as one in tort or for breach of contract, there being no allegation of physical pain or bodily injury, and the remaining claim of thirty-five dollars alleged actual damages and fifteen hundred dollars exemplary damages being insufficient to confer jurisdiction upon this court."

The case, as presented by the pleadings, is clearly one for breach of the contract of carriage alleged to have been entered into between the plaintiff in error and McDowell, through his agent Singleton. Orange Bank vs. Brown, 3 Wend. 158.; Walsh vs. R. R. Co., 42 Wis. 23.; S. C. 24, Amer. Rep. 376.

As against the plaintiff in error no acts of malice or aggravation are charged distinct from the negligence in failing to deliver the package of tickets. On the contrary both the original and supplemental petitions expressly exonerate the plaintiff in error from complicity in the alleged conspiracy to prevent the election of McDowell, and put the claim to a recovery on the ground of a violation of the contract to carry and deliver promptly and safely the package. As a consequence the measure of damages is the value of the tickets and

the sum expended in the effort to replace them, aggregating, under the pleadings, the sum of thirty-five dollars, with interest. 1 Suth. Dam., 157.; 3 Suth. Dam., 237.

The Express Company, however, should the language of the petition be thought broad enough to so charge, could not be held liable for the dishonest conduct of its agent, or the gratification of his personal or political animosity, except to the extent of the value of the package committed to his care. Friedlander vs. T. & P. R'y Co., 130 U. S., 416.; Mechem, on Agency, § § 740, 741.

But whether the case made by the pleadings be considered one in *tort* or for breach of contract, it is submitted that the Circuit Court was without jurisdiction.

We recognize the general principle that where the suit is upon a demand sounding in damages, in which the law fixes no precise limit to the recovery, the sum for which the plaintiff seeks judgment is alone to be considered in determining the jurisdiction. Smith vs. Greenhow, 109 U. S., 669.; Barry vs. Edmunds, 116 U. S., 550.

But where it clearly appears that the amount sought to be recovered is merely colorable and beyond the sum which can reasonably be expected in judgment, the rule is inapplicable. Bowman vs. R. R. Co., 115 U. S., 614.

In cases where the law gives the rule of damages, as for the breach of a contract to pay money or deliver an article of a certain alleged value, then the sum fixed by the law as the measure of damages, and not the amount

laid in the declaration, must control the jurisdiction. Wilson vs. Daniel, 3 Dall., 401. Barry vs. Edmunds, 116 U. S., 460.

So, also, in cases where it appears "as matter of law, from the nature of the case as stated in the pleadings, that there could not legally be a judgment recovered for the amount necessary to the jurisdiction, notwithstanding the damages were laid in the declaration at a larger sum," the case should be dismissed for want of jurisdiction. Barry vs. Edmunds, 116 U. S., 460.; Rowell vs. Western Union Telegraph Company, 75 Tex., 26.

By the assignment under consideration it is contended that, as matter of law, the court could not legally render judgment for the amount necessary to its jurisdiction, and accordingly should have dismissed the case. As heretofore insisted, it is believed the case stated in the pleadings is one for breach of the alleged contract of carriage. If this position be sound, the measure of damages is the value of the tickets, the sum expended in the endeavor to substitute them, and interest. In that case there could be no recovery for annoyance, vexation or injury to the feelings. Walsh vs. R. R. Co., 42 Wis., 23. Russell vs. Western Union Telegraph Co., 3 Dak., 315. S. C., 19 N. W. Rep., 408. Masters vs. Warren, 27 Conn., 293.

The damages recoverable are only such as are the natural and proximate consequence of the breach of the contract. 1 Suth. Dam. 74 et seq. That the defendant in error was not elected, or was "deprived of the

gratification, satisfaction and legal right and pleasure of having his friends, who composed a majority of the legally qualified electors and voters of said precinct" vote for him, and of "having the satisfaction, pleasure and legal right of gratifying a laudable, legal, just and honorable ambition," in consequence of the failure to deliver the tickets, cannot form an element of actual damage in the case. Obviously, these results depend, not upon the contract of the company to deliver the tickets, but upon the choice and judgment of a large number of voters, and to an unusual extent are remote and speculative. The suit, however, is not to recover the value of the office, or for damages resulting from defeat at the election. On all sides it was conceded at the trial that this was not the purpose of the suit and that such damages were too remote. Brown vs. Cummings, 7 Allen, 507. 1 Suth. Dam., 48-49.

To support the jurisdiction of the Circuit court it must therefore be held that under the pleadings damages for injury to the feelings may be recovered as *actual* damages. This is the important question in the case and in our view arises whether the action be considered as one in *tort* or upon contract. The precise question is whether injury to the feelings can be classed as an element of *actual* damage, under the facts pleaded and admitted by the demurrer, there being no allegation of physical pain or bodily injury. So far as we have been able to discover, after a careful examination, the question has not been determined by this court. The case, in fact, and confessedly, rests upon a line of telegraph cases in Texas, beginning with Stuart vs. Western Union

Telegraph Co., 66 Tex., 580. This *Stuart* case, we think, was the first to announce the doctrine contended for by the defendant in error, and an examination of the authorities cited in the opinion will show that they furnish no basis for the decision. Nor has the case been followed in other states. In the only case known to us in which the principle has been approved the court was divided, and in an exhaustive dissenting opinion the doctrine was severely criticised. Wadsworth vs. Western Union Telegraph Co., 2Pickle (Tenn.) 695. S. C., 8. S. W. Rep., 574.

The question has been several times reargued in Texas, and although the *Stuart* case has been uniformly adhered to, at every apportunity it has been distinguished. The Supreme Court of Texas evidently do not propose to extend the doctrine, should it finally not be overturned, for in a very late case it is said that "some kind of unpleasant emotion in the mind of the injured party is probably the result of a breach of contract in most cases, but the cases are rare in which such emotion can be held an element of damages resulting from the breach. For injury to the feelings in such cases the courts cannot give redress. Any other rule would result in intolerable litigation." Rowell vs. Western Union Telegraph Co., 75 Texas, 28.

It is not believed that the alleged injury to the feelings in this case was the proximate result of the breach of contract. It is also too remote and indefinite— too much the creature of mere fancy, to have been contemplated by the contracting parties as the probable result

acts of Bullbrook by retaining him in its employ," is insufficient, for that the facts stated show that the said Bullbrook acted beyond the scope of his agency; that said acts were not done in the interest of this defendant or to further any interest of this defendant; and the said acts of Bullbrook were therefore not the subjects of ratification."

By reference to the original and supplemental petitions, already copied in this brief, it will be seen that it is not alleged that the acts of Bullbrook were originally committed by direction of the company or any person representing the company in its corporate capacity. The liability of the company for exemplary damages must therefore rest, under the authorities, upon subsequent ratification of his conduct after full knowledge thereof. In none of the pleadings does the defendant in error charge a ratification, or retention of the agent, after full knowledge of his conduct. The supplemental petition, filed September 16th, 1889, which contains the only averment on the subject, charges that the "defendant Express Company has ratified the action of its agent and the defendant Bullbrook, by retaining him in its employment as its agent, from the date of the injuries complained of in the original petition up to the time of filing this suit and still so retains him, as plaintiff is ready to verify."

The general rule governing the recovery of exemplary damages against corporations is thus stated by the Supreme Court of Texas: "To make the master liable in any case for exemplary damages for the fraud, malice,

gross negligence or oppression of the servant, it should be alleged and proved that the acts of the servant which constitute the fraud, malice, gross negligence or oppression were committed by direction of the master, or that the master ratified and adopted such acts as his own, or that the master has been guilty of negligence in the selection and employment of the servant whose acts constitute the fraud, malice, gross negligence and oppression." R. R. Co. vs. Garcia, 70 Tex., 208. Dillingham vs. Russell, 73 Tex., 47. R. R. Co. vs. McDonald, 75 Tex., 41. R. R. Co. vs. Hays, 46 Tex., 272. Mechem, on Agency, § 740 and note 3.

The acts charged against the agent in this case were undoubtedly committed from personal or political ill will toward the defendant in error, if the facts alleged are true. They were not committed in behalf of plaintiff in error, for its benefit, in its interest, or in the doing of any act necessary or proper to be done in the discharge of the duties imposed upon him as agent, and as a consequence the company is only liable as a carrier for the value of the package. Dillingham vs. Russell, 73 Tex., 54; Mechem, on Agency, Sec. 740 and Note 3; Ibid, Sec. 751; Friedlander vs. T. & P. Ry. Co., 130 U. S. 425–426.

If the company can be held responsible for exemplary damages at all the only remaining ground is that it has ratified and approved the malicious conduct of the agent by retaining him in its employment. On this subject the rule is well established that "in order to constitute one a wrongdoer by ratification the original act must have been done in his interest or been intended to

Office Supreme Court U. S.
FILED,
DEC 1 1899
JAMES H. McKENNEY,

BRIEF OF DEFENDANT IN ERROR.

U. S. Supreme Court.

PACIFIC EXPRESS CO., Plaintiff in Error.

vs.

J. K M.cDOWELL, Defendant in Error.

GEORGE T. TODD

EDWARD GUTHRIDGE.

Attorneys for Defendant in Error.

...TIC EXPRESS CO., Plaintiff in Error.

vs.

...McDOWELL, Defendant in Error.

IN U. S. SUPREME COURT.

...s submit the cause on the question of jurisdiction, as ... by demurrer, with the following statement of the cause ... as shown by the record; to wit:

... The citizenship of plaintiff is shown to be in the East... of Texas and that of the defendant in the state of ..., a foreign corporation with local agent and office in ...ern District of Texas. The trespass was shown to be in ...ern District of Texas.

... Statutes of Texas, Art. 1198, clauses 21-21 b.

... Co. vs. Hill, 63 Texas Rep. 288.

... Press Co. vs. Bradly, 59 Texas Rep. 597.